
Federal Communications Commission

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
David P. Pace Jr.)	File Number: EB-06-LA-252
d/b/a Pacetronics / Pace Marketing)	
d/b/a/ 4:13 Electronics / Pacetronics)	NAL/Acct. No.: 200732900008
)	FRN: 0016467359
Nacogdoches, TX 75961)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: May 23, 2007

By the District Director, Los Angeles Office, Western Region, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture ("NAL"), we find that David P. Pace Jr. d/b/a/ Pacetronics / Pace Marketing and 4:13 Electronics / Pacetronics ("Pace"), in Nacogdoches, Texas, apparently willfully and repeatedly violated Section 302(b) of the Communications Act of 1934, as amended ("Act"),¹ and Section 2.803(a)(1) of the Commission's Rules ("Rules")² by offering for sale a non-certified Citizens Band ("CB") transceiver. We conclude, pursuant to Section 503(b) of the Act,³ Pace is apparently liable for a forfeiture in the amount of seven thousand dollars (\$7,000).⁴

II. BACKGROUND

2. In September and December of 2006, and in January of 2007, an investigation by the Enforcement Bureau's Los Angeles Office revealed that Pace was operating an Internet-based store, via an Internet website www.pacetronics.com, which marketed both uncertified CB transceivers, specifically Galaxy Model DX 99V, and uncertified radio frequency power amplifiers.

3. On February 14, 2007, the Los Angeles Office issued a Citation⁵ to Pace for violation of Section 302(b) of the Act and Sections 2.803(a)(1) and 2.815(c) of the Rules for selling non-certified CB transceivers.⁶ The Citation warned Pace that future violations may subject Pace to civil monetary forfeitures not to exceed \$11,000 for each violation or each day of a continuing violation,⁷ seizure of

¹ 47 U.S.C. § 302a(b).

² 47 C.F.R. § 2.803(a)(1).

³ 47 U.S.C. § 502(b).

⁴ 47 C.F.R. Part 2, Subpart J.

⁵ Citation to David Pace, Jr., d/b/a 4:13 Electronics, released February 14, 2007 ("Citation").

⁶ 47 C.F.R. §§ 2.803(a)(1), 2.815(c). Section 2.815(c) of the Rules provides that "[n]o person shall manufacture, sell or lease, offer for sale or lease (including advertising for sale or lease) or import, ship, or distribute for the purpose of selling or leasing or offering for sale or lease, any external radio frequency power amplifier or amplifier kit capable of operation on any frequency below 144 MHz unless the device has received a grant of type acceptance . . ." According to his response to the Citation, Pace no longer markets uncertified radio frequency power amplifiers.

equipment through *in rem* forfeiture action, and criminal sanctions including fines and imprisonment.⁸

4. On March 6, 2007, Pace replied to the Citation stating that the radios he markets are Amateur radios that operate solely on amateur frequencies and that he does not offer any type of modification or tuning that would make these radios capable of transmitting on the CB band. Pace also stated that “[v]irtually any Amateur radio that operates on the 10-meter band can be modified to operate on the CB band” and that he was aware of an interview and an email message from Commission staff supporting his views. Pace concluded that he expected the Los Angeles Office to withdraw the Citation within 30 days of the date of his response.

5. On April 18, 2007, a Los Angeles agent visited Pace’s Internet-based store at Internet website www.pacetrronics.com and found that Pace continued to market uncertified CB transceivers, specifically, Galaxy Model DX 99V.

III. DISCUSSION

6. Section 503(b) of the Act provides that any person who willfully or repeatedly fails to comply substantially with the terms and conditions of any license, or willfully or repeatedly fails to comply with any of the provisions of the Act or of any rule, regulation or order issued by the Commission thereunder, shall be liable for a forfeiture penalty. The term “willful” as used in Section 503(b) has been interpreted to mean simply that the acts or omissions are committed knowingly.⁹ The term “repeated” means the commission or omission of such act more than once or for more than one day.¹⁰

7. Section 302(b) of the Act provides that “[n]o person shall manufacture, import, sell, offer for sale, or ship devices or home electronic equipment and systems, or use devices, which fail to comply with regulations promulgated pursuant to this section.”¹¹ Section 2.803(a)(1) of the Rules provides that “[e]xcept as provided elsewhere in this section, no person shall sell or lease, or offer for sale or lease (including advertising for sale or lease), or import, ship, or distribute for the purpose of selling or leasing or offering for sale or lease, any radio frequency device unless in the case of a device subject to certification such device has been authorized by the Commission”¹²

(...continued from previous page)

⁷ See 47 C.F.R. § 1.80(b)(3).

⁸ See 47 C.F.R. § 501, 503(b), 510. Previously, on July 7, 2003, the Enforcement Bureau’s Dallas Office issued a Citation to Pace d/b/a Pacetrronics for marketing uncertified CB transceivers in violation of Section 302(b) of the Act and Section 2.803(a)(1) of the Rules. In his response to that Citation, Pace also reported that he had terminated his business and would no longer be selling radio equipment of any kind.

⁹ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that “[t]he term ‘willful’, when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act....” See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

¹⁰ Section 312(f)(2) of the Act, 47 U.S.C. § 312(f)(2), which also applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that “[t]he term ‘repeated’, when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.”

¹¹ 47 U.S.C. § 302a(b).

¹² 47 C.F.R. § 2.803(a)(1).

8. CB radio transceivers are subject to the equipment certification process and must be certified and properly labeled prior to being marketed or sold in the United States.¹³ Unlike CB radio transceivers, radio transmitting equipment that transmits solely on Amateur Radio Service (“ARS”) frequencies is not subject to equipment authorization requirements prior to manufacture or marketing. However, some radio transmitters that transmit in a portion of the 10-meter band of the ARS (28.000 to 29.700 MHz) are equipped with rotary, toggle, or pushbutton switches mounted externally on the unit, which allow operation in the CB bands after completion of minor and trivial internal modifications to the equipment. To address these radios, the Commission adopted changes to the CB type acceptance requirements by defining a “CB Transmitter” as “a transmitter that operates or is intended to operate at a station authorized in the CB.”¹⁴ Section 95.655(a) of the Rules also states that no transmitter will be certificated for use in the CB service if it is equipped with a frequency capability not listed in Section 95.625 of the Rules (CB transmitter channel frequencies).¹⁵ Also, the Commission’s Office of General Counsel (“OGC”) released a letter on the importation and marketing of ARS transmitters, which clarified that transmitters that “have a built-in capacity to operate on CB frequencies and can easily be altered to activate that capacity, such as by moving or removing a jumper plug or cutting a single wire” fall within the definition of “CB transmitter” under Section 95.603(c) of the Rules and therefore require certification prior to marketing or importation.¹⁶ Additionally, the Commission’s Office of Engineering and Technology (“OET”) evaluated the Galaxy model at issue here and determined that these devices could easily be altered for use as CB transceivers.¹⁷

9. On February 14, 2007, the Los Angeles Office issued a Citation to Pace for violation of Section 302(b) of the Act and Section 2.803(a)(1) of the Rules. Specifically, the Los Angeles Office determined that Pace was selling non-certified Galaxy CB transceivers through an Internet-based store, via an Internet website www.pacetrronics.com. Regardless of Pace’s claims in his March 2007 response to the Los Angeles Office’s Citation, that he does not offer modification of the Galaxy Model DX99V, OET has determined that this Galaxy model could be easily altered for use as CB transceivers. Consequently, pursuant to the Rules, as detailed above, this model must be certified by the Commission prior to being marketed in the United States. Despite any informal advice Pace may be aware of from Commission staff,¹⁸ the Commission has determined that this Galaxy model transceiver requires certification.¹⁹ On April 18, 2007, a subsequent inspection by a Los Angeles agent revealed that the Internet website, www.pacetrronics.com, continued to sell non-certified Galaxy CB transceivers.

10. Pace previously received a Citation concerning the sale of non-certified Galaxy CB transceivers, via the Internet website www.pacetrronics.com, but continued to sell the transceivers. Therefore, Pace’s violation was willful. The violation occurred on more than one day. Therefore, it was repeated. Based on the evidence before us, we find that Pace apparently willfully and repeatedly violated Section 302(b) of the Act and Section 2.803(a)(1) of the Rules by offering for sale non-certified CB transceivers.

¹³ See 47 C.F.R. §§ 2.907, 2.927(a).

¹⁴ 47 C.F.R. § 95.603(c). See *Pilot Travel Centers*, 19 FCC Rcd 23113, 23114 (2004).

¹⁵ 47 C.F.R. § 95.655(a).

¹⁶ Letter from Christopher Wright, General Counsel, FCC to John Wood, Chief Intellectual Property Rights, US Customs Service, 14 FCC Rcd 7797 (OGC 1999).

¹⁷ *Pilot Travel Centers*, 19 FCC Rcd at 23119.

¹⁸ As the Commission has consistently held, “parties who rely on staff advice or interpretations do so at their own risk.” *Hinton Telephone Company*, 10 FCC Rcd 11625 (1995).

¹⁹ *Pilot Travel Centers*, 19 FCC Rcd at 23119.

11. Pursuant to The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines, ("Forfeiture Policy Statement"), and Section 1.80 of the Rules, the base forfeiture amount for importing or marketing of unauthorized equipment is 7,000.²⁰ In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(D) of the Act, which include the nature, circumstances, extent, and gravity of the violations, and with respect to the violator, the degree of culpability, and history of prior offenses, ability to pay, and other such matters as justice may require.²¹ Applying the Forfeiture Policy Statement, Section 1.80, and the statutory factors to the instant case, we conclude that Pace is apparently liable for a \$7,000 forfeiture.

IV. ORDERING CLAUSES

12. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.311, 0.314 and 1.80 of the Commission's Rules, David P. Pace Jr. is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of seven thousand dollars (\$7,000) for violations of Section 302(b) of the Act and Section 2.803(a)(1) of the Rules.²²

13. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Commission's Rules within thirty days of the release date of this Notice of Apparent Liability for Forfeiture, David P. Pace Jr. **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

14. Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 358340, Pittsburgh, PA 15251-8340. Payment by overnight mail may be sent to Mellon Bank /LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, PA 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6106.

15. The response, if any, must be mailed to Federal Communications Commission, Enforcement Bureau, Western Region, Los Angeles Office, 18000 Studebaker Rd., Suite 660, Cerritos, CA 90703 and must include the NAL/Acct. No. referenced in the caption.

16. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

17. Requests for payment of the full amount of this Notice of Apparent Liability for Forfeiture under an installment plan should be sent to: Associate Managing Director – Financial Operations, Room 1A625, 445 12th Street, S.W., Washington, D.C. 20554.²³

²⁰ 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999); 47 C.F.R. §1.80.

²¹ 47 U.S.C. § 503(b)(2)(E).

²² 47 U.S.C. §§ 302a(b), 503(b), 47 C.F.R. §§ 0.111, 0.311, 0.314, 1.80, 2.803(a)(1).

²³ *See* 47 C.F.R. § 1.1914.

Federal Communications Commission

18. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by Certified Mail, Return Receipt Requested, and regular mail, to David P. Pace, Jr., at his address of record.

FEDERAL COMMUNICATIONS COMMISSION

Catherine Deaton
District Director
Los Angeles District Office
Western Region
Enforcement Bureau